

02-6

August 26, 2015
 Attn: Marlene H. Dorch, Secretary
 Federal Communications Commission
 Office of the Secretary
 9300 East Hampton Dr.
 Capitol Heights, MD 20743

Received & Inspected

SEP 01 2015

FCC Mail Room

Decision Document: Appeal for Increase in funding due to Ministerial and Clerical Error

Entity & BEN	Dzilh-Na-O-Dith-Hle Community Grant School – BEN 99238
Contact Person	Alvina Begay
Contact Information	35 Road 7585 Box 5003 Bloomfield, NM 87413 (505) 960-0356 albegay74@gmail.com
Funding Year	2014
Application Type & Number	Form 471 Application # 1035361
FRN	2817678
Service Provider	Smith Bagley, Inc. (CellularOne)
Service Prover SPIN	143000989
Appeal Reason	Installation fee of \$5000 to be added to the 471 for FY2014

Dear Sir/Madam

I am the technology assistant at the Dzilh-Na-O-Dith-Hle Community School. It was my first time filling out the 471 application for funding year 2014. I made a clerical error of not adding the installation fee, I thought the \$5,000 was included in the \$60,000 amount of the contract.

After discussing this issue with the vendor, they agreed that the bid could be confusing and wrote a letter stating as such in support of the school. This letter is attached.

We are requesting that the \$5,000 installation fee be added to the amount approved for FRN 2817678.

This internet connection is extremely important to the school and is critical to the learning environment. The inadvertent omission of the installation fee was a clerical and ministerial error that we unfortunately did not catch before the FRN was funded.

Sincerely,

Alvina Begay

No. of Copies rec'd _____
 List ABCDE _____



Dzilth-Na-O-Dith-Hle Community Grant School

35 Road 7585 # 5003

Bloomfield, New Mexico 87413

Telephone: (505) 960-0356/3066 Fax: (505) 960-8563



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Dear Ms. Dorch,

We are very concern that our monthly internet service provided by Cellular One was not accepted by USAC for payment. Our school funding has not been increase for three years by the Bureau of Indian Affairs and yet our school operating costs continues to increase yearly.

For many years, our school used a satellite system for internet services for our school technology. The satellite system was unreliable by shutting down every time it rained or the wind blew and the system was down for days. Our school fully utilizes the internet for teaching the students using the IPAD, promethium board, desk top, lap tap and for test taking. The lack of a working internet system negatively impacted our education program.

Our school selected Cellular One for internet services because they were the only providers who were able to install tower equipment specifically for our school out here on the Navajo reservation.

Our teachers and students have been thrilled to finally have reliable internet service for their teaching and learning programs. We noticed our students are more interested in learning using technology and they can explore the world by never leaving the reservation. The community of Dzilth-Na-O-Dith-Hle's demographic is one of the extreme poverty in the area. All of our students are all on free lunch and we struggle to supply supplies and materials for instruction. We cannot stress how imperative it is that we have a reliable internet service for the educational benefit for our students.

We are afraid we will have to transfer back to the satellite system because our school does not have the extra dollars to pay for its internet services from Cellular One. So, please reconsider the internet bills so our students can continue to progress in their educational goals.

Please contact me at 505-960-0357 for any further information or questions.

Yours in Education,

Michael Walker, Executive Director/Principal

Live  Connected

CELLULARONE[®]

Proposal to provide Dedicated Internet Services for Dzilh-Na-O-Dith-Hle

Date February 11, 2014

Submitted by Smith Bagley Inc., dba CellularOne of Northeastern Arizona

Contact Ian Hathcock

Mobile 928-205-7713

e-mail ihathcock@cellularoneaz.com

Spin # 143000989

Application # 358540001201654


Received & Inspected

SEP 01 2015

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Dedicated Internet Service

Three (3) Year Agreement

Monthly Recurring Cost	Annual Recurring Cost	Installation Fee	Proposal Selection
\$4,000.00	\$48,000.00	\$7,000.00	Yes Initial X _____ Date _____
\$5,000.00	\$60,000.00	\$5,000.00	Yes Initial X  Date 2-12-14

Ten (10)Mbps Dedicated Internet via Full Duplex
Microwave Link providing a 100% symmetrical link

Twenty (20)Mbps Dedicated Internet via Full Duplex
Microwave Link providing a 100% symmetrical link

Included Services:

- 24-hour customer service.
- DNS
- Response time (less than 4 hours) for service issues.
- No equipment or maintenance costs.
- Secured network. Engineered to 99.99% uptime
- Updates, Network Maintenance, and help line.
- Graphs provided of usage and available band width
- Additional Bandwidth is available and can be provisioned any time during the life of the contract. Additional Bandwidth will be provisioned by Mbps increments.
- Credits will be provided for unscheduled outages on a pro rated basis


Accepted _____ Date 2/12/14


Accepted For Smith Bagley, Inc _____ Date 2/26/14

1500 S. White Mountain Rd.
Suite 103
Show Low, AZ. 85901

FRN: 2604387
471#954728
BEN:99238

I talked with DZILTH-NA-DITH-HLE School about the 2014-2015 proposal and they thought the install fee was included in the annual MRC fee. The install fee was \$5000.00. Install fee makes the school exceed the funding from USAC

MRC \$5000
X12

\$60,000
Install fee \$5000

Total for 2014-2015 \$65,000
Funding requested \$60,000

CellularOne
 1500 South White Mountain Road Suite #103
 Show Low, AZ 85901
 928-537-0690

Date: 8/11/15
 Funding year 2014-2015
 Spin # 143000989

ICT DZILTH-NA-O-DITH-HLE SCHOOL
 HC 4 BOX 5003
 BLOOMFIELD, NM 87413

Microwave Broadband Services 20Mbps
 Cellular One Account Number # 00400285695
 FRN Number: 2604387
 471 Number: 954728
 BEN:99238
 District Portion: 90%

Description	Total	Ineligible	USAC	School Total
July 2014 Invoice number 3060495	\$ 10,913.09	\$0.00	\$9,821.78	\$ 1,091.31
August 2014 Invoice number 3081474	\$ 5,387.50	\$0.00	\$4,848.75	\$ 538.75
September 2014 Invoice number 3112394	\$ 5,387.50	\$0.00	\$4,848.75	\$ 538.75
October 2014 Invoice number 3152605	\$ 5,387.50	\$0.00	\$4,848.75	\$ 538.75
November 2014 Invoice number 3179592	\$ 5,387.50	\$0.00	\$4,848.75	\$ 538.75
December 2014 Invoice number 3208494	\$ 5,387.50	\$0.00	\$4,848.75	\$ 538.75
January 2015 Invoice number 3237402	\$ 5,396.88	\$0.00	\$4,857.19	\$ 539.69
February 2015 Invoice number 3264344	\$ 5,396.88	\$0.00	\$4,857.19	\$ 539.69
March 2015 Invoice number 3286278	\$ 5,396.88	\$0.00	\$4,858.09	\$ 538.79
April 2015 Invoice number 3320171	\$ 5,396.88	\$0.00	\$4,857.19	\$ 539.69
Payment from school				\$ (3,785.59)
May 2015 Invoice number 3347155	\$ 5,396.88	\$0.00	\$504.81	\$ 4,892.07
USAC funds have been exhausted. That is why USAC only funded \$504.81. The rest of this invoice (above) and next months will be the schools reasonability				
Payment from school				\$ (2,697.91)
June 2015 Invoice Number 3369121	\$ 5,396.88			\$ 5,396.88
Adjustment for tax				\$ (5,103.16)
Thank you for your business !	Subtotal	\$ 64,834.99	\$0.00	\$54,000.01
				\$ 4,645.20
	Schools Total Amount Due		\$	4,645.20

Make all checks payable to CellularOne
 Payment is due within 30 days.
 If you have any questions concerning this invoice,
 contact: Erate/ICT 928-537-0375 EXT 2274

For new products and promotions visit <http://www.cellularoneonline.com/>

SERVICE AGREEMENT

Field Code Changed

THIS SERVICE AGREEMENT ("Agreement") is made and entered into as of the 1st day of July 2014, by and between Dzilh-Na-O-Dith-Hle Community School under the Bureau of Indian Education ("Client"), with a principal place of business at 35 Road 7585, Bloomfield, New Mexico 87413, and Smith Bagley Inc., a District of Columbia corporation dba Cellular One of North East Arizona (hereinafter "Service Provider"), with a principal place of business at 1500 S. White Mountain Road, Show Low, Arizona 85901. Client and Service Provider are referred to herein individually as "Party" or collectively as "Parties".

1. **USE/PURPOSE.** Service Provider hereby agrees to provide to Client 20Mbps of Dedicated Internet Access. Service Provider shall provide the Services as described in this Agreement and all attachments incorporated in this Agreement. Service Provider shall provide to Client, at 35 Road 7585, Bloomfield, New Mexico 87413 (Client's Premises"). For purposes of the this Agreement, Dedicated Internet Access is defined as a predictable and high bandwidth internet connection that is an always on connection that connects directly to the Service Provider's core equipment that is dedicated to Client that is proactively monitored by Service Provider 24/7/365 to verify uptime and availability.

Service Provider's monitoring services include the following:

- A. ICMP Testing;
- B. E-Mail Notification of unresponsive equipment;
- C. E-Mail Notification of equipment change status;
- D. Bandwidth monitoring; and
- E. Necessary IP addresses.

If requested by Client, Service Provider shall provide Client monitored testing of:

- A. Ping test; and
- B. Bandwidth utilization.

3. **NONPERFORMANCE – ROOT CAUSE ANALYSIS
AND REMEDIATION.**

In the event of the Service Provider's failure to perform required services or meet agreed upon service levels or other Service Provider service standards as required by the State under this Agreement, the Service Provider shall perform an analysis of the cause of the service level problem and implement remediation steps as appropriate. The Service Provider shall supply documentation of the analysis and the remediation steps to the Client. The Client shall have the right to review the analysis and approve the remediation steps including the schedule prior to or subsequent to their implementation. For purposes of this Agreement, Service Provider warrants its network to be equal to a carrier grade network of 99.99%.

4. **GENERAL.** Client agrees to the following:

- A. Client agrees the Service Provider is not responsible for the content of any transmissions using the services, or any other use of the services, by Client or by any person or entity Client authorizes or otherwise permits to access the services (a "User"). Client agrees that it will not permit any User to use the services for illegal purposes, or to interfere with or disrupt other network Users, against inappropriate and illegal use of Internet services. Disruptions include, but are not limited to, distribution of unsolicited advertising or chain letters, propagation of computer worms and viruses, and using the network to make unauthorized entry to any other machine accessible via the network, more fully described Service Provider's Internet Fair Use Policy located at www.cellularoneaz.com/fair-use-policy (Service Provider's Fair Use Policy). Service Provider may suspend services upon notice to Client's PRIMARY Point of Contact (PRIMARY POC) or SECONDARY Point of Contact (SECONDARY POC) based upon evidence of substantial disruption to or illegal use of the network, and may terminate the contract if the issue is not resolved to the satisfaction of both parties after two (2) weeks of good faith effort to resolve the matter. Provider is responsible to provide a minimum of forty-eight (48) hours final notification prior to suspension or termination of services. Provider will prorate any billings to client in the event of suspension or termination of services.
- B. To the extent deemed necessary by Client, Client shall implement security procedures necessary to limit access to the Services to Client's authorized users and shall maintain a procedure external to the Services for reconstruction of lost or altered files, data or programs.

- C. Client shall follow standardized filtering/access control as is customary for a K-12 educational entity as prescribed by New Mexico Statutes, BIA/BIE educational standards and/or as required as a participant in the Federal ERATE program under FCC/USAC regulations and Children's Internet Protection Act (CIPA).
- D. Client is responsible for establishing designated points of contact to interface with Service Provider. In the event Client permits any User who is not an employee of Client to access the Services, Client shall provide all interfaces with such User in connection with the Services (except in providing services as specified by Addendum(s)).
- E. Client may provide Internet access to the community as provided under:

FCC 10-175, CC Docket No. 02-6, GN Docket No. 09-51. SIXTH REPORT AND ORDER Adopted: September 23, 2010, Released: September 28, 2010

["Changing our rules to permit schools to allow community use of E-rate funded services outside of school hours; supporting eligible services to the residential portion of schools that serve students with special circumstances;"]

- F. Client agrees to comply, and to cause any User to comply, with the United States law with regard to the transmission of technical data, which is exported from the United States using the Services.
- G. Client understands that Services provided under this Agreement (including Internet use) may require registrations and related administrative reports that are public in nature. Client will be advised as to any public reporting that may be allowed to approve or disapprove as required by New Mexico or Navajo legal statutes regarding the release of information of a minor, State or Federal employee.
- H. Client agrees to comply with Service Provider's Internet Fair Use Policy located at www.cellularoneaz.com/fair-use-policy, or upon request by Client, which is incorporated herein and made part of this Agreement.
- I. If the Client cancels or terminates services at any time during the Initial contract period or any renewal period for any reason whatsoever, and through no fault of Service Provider, Client's obligations herein shall continue until the end of contract period.

- J. Client understands that Service Provider has entered into this Agreement on the material fact and reliance that Service Provider will be providing equipment and service to Client at the Client's Premises. If Client chooses to relocate its Client Premises during the term of this Agreement, or any extended term, Client shall be solely responsible for all costs for the relocation.

Further, Client shall give Service Provider sixty (60) days written notice of its intent to relocate Client's Premises. Upon receipt of written notice of Client's intent to relocate Client's Premises, Service Provider shall coordinate with Client for the relocation of Client's Premises. In no event shall Client move, remove, relocate, or disconnect Service Provider's equipment; Service Provider shall relocate its equipment to the new location of Client's Premises.

5. **TERM.**

- A. **Primary Term.** The Primary Term of this Agreement shall be for thirty-six (36) months, and shall commence July 1, 2014 and shall terminate at midnight on June 30, 2016 unless sooner terminated as provided herein.
- B. **Extended Terms.** The Primary Term of this Agreement may be renewed upon the mutual written agreement of the parties.

6. **BILLING AND PAYMENT.**

- A. Client shall pay Service Provider Five Thousand Dollars (\$5,000.00) each month throughout the term of this Agreement pursuant to the terms set forth below in Paragraph 6.C.
- B. **Additional Compensation.** One time installation fee of Five Thousand Dollars (\$5,000.00).
- C. Client shall pay the invoice Client after the Services have been connected at Client's Premises. Thereafter, Service Provider shall bill Client monthly for all service charges due and payable under this Agreement for the preceding calendar month. Client shall pay each such invoice within the due date indicated on the invoice. In the event of a dispute over any invoice rendered by Service Provider, Client shall pay the undisputed portion in good faith.

D. Progress Payments.

- (1) Progress payments may be made by the school district to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding month if the contractor agrees to adhere to the provisions of New Mexico statutes. Payment shall be made within thirty (30) days after receipt of the estimate of the work performed, except that a percentage of all estimates shall be retained as provided in R7-2-1114. The estimate of the work shall be deemed received by the school district on submission of the estimate of the work to the school district or a person designated by the school district for the submission, review or approval of the estimate of the work. An estimate of the work submitted under this Section shall be considered approved and certified after seven (7) days from the date of submission unless before that time the school district or designee prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract. The school district may withhold an amount from the progress payment sufficient to pay the expenses the school district reasonably expects to incur in correcting the deficiency set forth in the written finding. No contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this Section. On completion and acceptance of separate divisions of the contract on which the price is stated separately in the contract, payment may be made in full including retained percentages, less deductions, unless substitute security has been provided pursuant to R7-2-1114.
- (2) A subcontractor may notify the school district, in writing, requesting that the subcontractor be notified by the school district in writing within five (5) working days from payment of each progress payment made to the contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.
- (3) If any payment to a contractor is delayed after the date due, interest shall be paid at the rate of one percent (1%) per month, or a fraction of a month, on such unpaid balance as may be due.

- E. In the event of default, the defaulting party agrees to pay all costs of collection including all reasonable attorney fees, court costs, repossession fees and/or collection agency fees together with interest thereon at the annual rate of eighteen percent (18%) per annum.
- F. Following Client's request and confirmation by Service Provider, Service Provider will grant a pro-rata credit to Client for each hour in excess of twenty-four (24) hours during a calendar month that Client was unable to access the services due to causes within the reasonable control of Service Provider, limited to Service Provider's network, but in no event due to acts of God. To avoid confusion, the following illustrates the pro-rata formula: $\$5,000.00 / 30 / 24 = \$6.94 / \text{hr.}$
- G. Upon Client's request, Service Provider agrees to cooperate in good faith with the Client to reduce cost under this Agreement based on new communication technology that may become available during the terms of this Agreement.
- H. Invoices submitted for payment shall contain the same description detail as provided in the quote form, and at a minimum, shall identify all products and services, the unit price, units of quantity, extended price, service address or location of Service, and invoice total, for both paper and electronic media.
- I. Billing disputes shall be addressed in accordance with the Billing Disputes section of the Dispute Resolution process contained herein. Service Provider shall work with Client, or their designee (which may be an approved Subcontractor), to automate the dispute process between Service Provider and Client authorized computer systems. Service shall provide a responsibility matrix identifying representatives, their phone number and email address, for questions and resolution of issues, including escalation of unresolved disputes.

7. **TERMINATION.** This Agreement may be terminated by the applicable party if any of the following occur:

- A. If Client fails to pay any outstanding charges within ten (10) days after receipt of written notice from Service Provider, of delinquency, Service Provider may, at its option, suspend the services under this Agreement until such delinquencies are paid. If such delinquencies continue unremedied for an additional ten (10) days after suspension, Provider may terminate this Agreement in addition to other available rights and remedies.
- B. If Service Provider fails to perform or observe any material term or condition of the Agreement within thirty (30) days after receipt of written notice from Client of such failure, Client, in addition to other available rights and remedies, may terminate the Agreement at any time after the thirty (30) days have elapsed.
- C. If the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of the Communications Facility cannot be obtained, or is revoked, or if Client or Service Provider determines the cost of obtaining such approval is prohibitive.

8. **LIABILITY AND INDEMNITY.**

- A. SERVICE PROVIDER MAKES NO WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY SERVICES OR PRODUCTS UNDER THIS AGREEMENT, AND SERVICE PROVIDER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

B. SERVICE PROVIDER SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST PROFITS, LOST SAVINGS OR LOST REVENUES, WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SERVICE PROVIDER SHALL NOT BE LIABLE FOR ANY DAMAGE THAT CLIENT MAY SUFFER ARISING OUT OF USE, OR INABILITY TO USE, THE SERVICES OR PRODUCTS PROVIDED HEREUNDER UNLESS SUCH DAMAGE IS CAUSED BY AN INTENTIONAL ACT OF SERVICE PROVIDER. SERVICE PROVIDER SHALL NOT BE LIABLE FOR UNAUTHORIZED ACCESS BY THIRD PARTIES TO CLIENT'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT, LOSS OR DESTRUCTION OF CLIENT'S NETWORK SYSTEMS, APPLICATIONS, DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, EXCEPT AS EXPRESSLY SET FORTH IN OR CONTEMPLATED BY THIS AGREEMENT IN ANY INSTANCE INVOLVING PERFORMANCE OR NONPERFORMANCE BY SERVICE PROVIDER WITH RESPECT TO SERVICES OR PRODUCTS PROVIDED HEREUNDER. CLIENT'S SOLE REMEDY SHALL BE:

- (1) IN THE CASE OF SERVICES, REFUND OF A PRO RATA PORTION OF THE PRICE PAID FOR SERVICES WHICH WERE NOT PROVIDED, OR
- (2) IN THE CASE OF PRODUCTS, REPAIR OR RETURN OF THE DEFECTIVE PRODUCT TO SERVICE PROVIDER FOR REFUND, AT THE OPTION OF SERVICE PROVIDER EXCEPT AS EXPRESSLY SET FORTH IN OR CONTEMPLATED BY THIS AGREEMENT. IN THE CASE OF REFUND FOR LOST SERVICES, CREDIT WILL BE ISSUED ONLY FOR PERIODS OF LOST SERVICE GREATER THAN TWENTY-FOUR (24) HOURS.

- C. THESE LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND, WHETHER ACTIVE OR PASSIVE, AND SHALL SURVIVE FAILURE OF AN EXCLUSIVE REMEDY.
- D. SERVICE PROVIDER SHALL NOT BE RESPONSIBLE FOR:
- (1) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CLIENT, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, SUPPLIERS OR LICENCEES, INTEROPERABILITY OF SPECIFIC CLIENT APPLICATIONS,
 - (2) INABILITY OF CLIENT TO ACCESS OR INTERACT WITH AN OTHER SERVICE PROVIDER THROUGH THE INTERNET, OTHER NETWORKS OR USERS THAT COMPRISE THE INTERNET OR THE INFORMATIONAL OR COMPUTING RESOURCES AVAILABLE THROUGH THE INTERNET,
 - (3) INTERACTION WITH OTHER SERVICE PROVIDERS, NETWORKS, USERS OR INFORMATIONAL OR COMPUTING RESOURCES THROUGH THE INTERNET,
 - (4) SERVICES PROVIDED BY OTHER SERVICE PROVIDERS,
 - (5) PERFORMANCE IMPAIRMENTS CAUSED ELSEWHERE ON THE INTERNET, OR NON-SERVICE PROVIDER'S FACILITIES USED BY ANY USERS TO ACCESS THE SERVICES BETWEEN THE USERS'S LOCATION AND THE PREMISES TO WHICH SERVICES ARE PROVIDED UNDER THIS AGREEMENT.
- E. EACH PARTY AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OTHER PARTY FROM ALL LIABILITY, CLAIMS, LAWSUITS, AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, COSTS AND EXPERT WITNESS' FEES ARISING OUT OF ANY CONDUCT, ACTIONS, OMISSIONS , OR NEGLIGENCE OF A PARTY FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.

9. **DEFAULTS AND REMEDIES.**

- A. Notwithstanding anything in the Agreement to the contrary, neither party shall be in default under this Agreement until fifteen (15) days after receipt of written notice of a default from the other party, or such shorter period as may be provided in the Agreement, regulations and/or guidelines (the "cure period"); provided, however, where any such default cannot reasonably be cured within such cure period, the party alleged to be in default shall not be deemed to be in default under the Agreement if said party commences to cure such default within said cure period and thereafter diligently pursues such cure to completion, provided that in no event shall the cure period extend beyond thirty (30) days.
- B. In the event of either party's failure to comply with any material provision of this Agreement, the other party may, at its option, cure the default of the other party at the expense of the defaulting party, without affecting its right to demand, sue for, and collect all of its damages arising out of the other party's default, or terminate this Agreement without affecting its right to sue for any other damages to which the it may be entitled.
- C. The failure by either party to make timely payment of all fees or amounts due and payable in connection with the use of the Services that would adversely affect Service Provider's use of Services shall be deemed to be a material breach of this Agreement, and shall entitle the other party to terminate this Agreement unless such amounts are paid within fifteen (15) days after written notice of nonpayment. The prevailing party in any dispute arising under or related to this Agreement shall be entitled to recover its reasonable attorneys' fees, costs and expert witness' fees.
- D. The rights and remedies stated in this Agreement are not exclusive; and the parties, in the event of a breach hereof or a dispute, are entitled to pursue any of the remedies provided herein, by law, or by equity.
- E. No course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Agreement shall operate as a waiver of any of the rights hereunder or by law or equity provided, nor shall any waiver of any prior default operate as a waiver of any subsequent default, and no express waiver shall affect any term or condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

- F. In the event either party shall be rendered unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed by such party under this Agreement, such covenant, agreement, obligation or undertaking, insofar as the same shall be affected by such force majeure, shall be suspended during the continuance of any liability so caused, and such default shall be remedied with all reasonable dispatch. The term "force majeure" as employed in this section shall include acts of God, strikes, lockouts, or other industrial disturbances, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, or repairs to machinery or pipes, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes whether or not of the same kind as specifically enumerated, not within the control of the party claiming suspension and which by the exercise of due diligence or the payment of money such party is unable to overcome. No Party shall be entitled to relief under this paragraph unless such Party shall have given the other Party reasonable notice after the occurrence of such event of force majeure.
- G. If it is determined that Client is in default of this Agreement, Client shall be responsible for the remaining term of this Agreement in effect at time of default.

10. CLIENT CONTRACTUAL REMEDIES.

- A. If the Client in good faith has reason to believe that the Service Provider does not intend to, or is unable to perform or continue performing under this Agreement, the Client may demand in writing that the Service Provider give a written assurance of intent to perform. Failure by the Service Provider to provide written assurance within the number of days specified in the demand may, but in no event less than five (5) business days, at the Client's option, be the basis for terminating the Agreement.
- B. The Client may, at any time, by written order to the Service Provider, require the Service Provider to stop all or any part, of the work called for by this Agreement for a period of ninety (90) days after the order is delivered to the Service Provider, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Service Provider shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Notwithstanding the above, Client shall remain responsible of its obligations contained herein.

- C. Materials supplied under this Agreement shall fully comply with the Agreement. The delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials, the Client may terminate the Agreement for default under applicable termination clauses in the Agreement, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- D. The Client may, by written notice to the Contractor, immediately terminate this Agreement if the Client determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.
11. **ASSIGNMENT.** This Agreement is personal to the original Client executing this Agreement, and the rights of Service Agreement hereunder will not be assigned or otherwise transferred in whole or in part by Client unless Client requests and receives Service Provider's prior written consent, provided however, that Service Provider may, without Client's consent, transfer or assign this Agreement in conjunction with the sale of Service Provider's business or any of Service Provider's affiliates, or subsidiaries, the sale or transfer by Service Provider of all or substantially all of its assets. Service Provider shall include a provision in its sales contract that buyer shall acknowledge acceptance of this Agreement and that buyer is subject to the terms and conditions of this Agreement prior to close of sale.

12. **NOTICES.**

All notices or demands are deemed to have been given or made when delivered in person or mailed by certified, registered, or express mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective parties as follows:

Client:

Dzilth-Na-O-Dith-Hle
Community School
35 Road 7585
Bloomfield, NM 87357

Service Provider:

Smith Bagley, Inc. d/b/a
Cellular One of North East Arizona
1500 S. White Mountain Road
Show Low, AZ 85901
Phone (928) 537-0690
Attn.: Director of Legal &
Administration

The address to which any notice or demand may be given to either party may be changed by written notice.

13. **OTHER CONDITIONS.**

- A. Any legal action arising from or in connection with this Agreement, or any Services provided or work performed hereunder, must be brought within two (2) years after the cause of action arises.
- B. Neither party shall publish or use any advertising, sales promotions, press releases or other publicity which use the other party's name, logo, trademarks or service marks, or otherwise use the other party's name, logo, trademarks or service marks, without the prior written approval of the other party.
- C. Nothing in this Agreement shall create or vest in Client any right, title, or interest in the Services, other than the right to use the Services under the terms and conditions of this Agreement.
- D. If any portion of this Agreement is found to be invalid or unenforceable, the remaining portions shall remain in effect and the parties will begin negotiations for a replacement of the invalid or unenforceable portion.
- E. Service Providers performance obligations under this Agreement shall be solely to Client and not to any third party. Other than as expressly set forth herein, this Agreement shall not be deemed to provide third parties with any remedy, claim, right of action, or other right.
- F. SERVICE PROVIDER SHALL NOT HAVE ANY LIABILITY FOR DAMAGES OR DELAYS DUE TO FIRE, EXPLOSION, LIGHTNING, POWER SURGES OR FAILURES, STRIKES OR LABOR DISPUTES, WATER ACTS OF GOD, THE ELEMENTS, WAR, CIVIL DISTURBANCES, ACTS OF CIVIL OR MILITARY AUTHORITIES OR THE PUBLIC ENEMY, INABILITY TO SECURE PRODUCTS OR TRANSPORTATION FACILITIES, FUEL OR ENERGY SHORTAGES, ACTS OR OMISSIONS OF COMMUNICATINS CARRIERS OR SUPPLIES, OR OTHER CAUSES BEYOND ITS CONTROL WHETHER OR NOT SIMILAR TO THE FOREGOING.

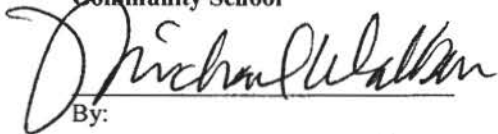
- G. All formal notices, requests, demands and other communications required or permitted under this Agreement shall be in writing unless otherwise specified in the Agreement and shall be deemed to have been duly made and received when personally served, or when mailed by first class mail, postage prepaid, to the addresses indicated in Section 12 of this Agreement. The parties may change the addresses on ten (10) days prior written notice.
- H. Each of the parties hereto represents and warrants to each other party hereto that this Agreement has been duly authorized by all necessary action and that this Agreement constitutes and will constitute a binding obligation of each such party.
- I. Each party will comply with all applicable federal, state, local and other laws, regulations, rules, and ordinances applicable to the provision and use of the Services under this Agreement. Service Provider agrees to notify the Client immediately if it becomes aware of any operation related to this Agreement which is not in compliance with applicable law.
- J. No change, modification, or waiver of any of the terms of this Agreement shall be binding unless included in a written agreement and signed by both parties.
- K. Service Provider and Client shall cooperate fully in maintaining in full force and effect during the term of this Agreement.
- L. Whenever the consent or approval of either party is required, or a determination must be made by either party, no such consent or approval shall be unreasonably withheld.
- M. This Agreement and attached exhibits, as signed by the parties hereto, constitute the entire agreement between Service Provider and Client; no prior written promises, nor prior, contemporaneous, or subsequent oral promises or representations, shall be binding. This Agreement shall not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience only and neither limit nor amplify the provisions of this Agreement. The invalidity of any portion of this Agreement shall not have any effect on the balance thereof. The provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of said Service Provider and Client.

- N. This Agreement shall be construed and enforced in accordance with the laws of the State of New Mexico.
- O. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- P. The Parties knowingly and expressly consent to the foregoing terms and conditions. Each signatory is authorized to enter into the Agreement on behalf of its respective Party.

IN WITNESS WHEREOF, Service Provider and Client have signed this Agreement as of the date and year first above written.

Client:

**Dzilth-Na-O-Dith-Hle
Community School**


By: _____

Its: *Executive Director /
Principal*

Service Provider:

**Smith Bagley, Inc. d/b/a
Cellular One of North East Arizona**

By: Justin E. Hinkle

Its: Chief Executive Officer